Nabors Alaska Drilling, Inc. *and* Alaska State District Council of Laborers, AFL–CIO. Cases 19–CA–24152 and 19–RC–13080

April 8, 1998

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

BY CHAIRMAN GOULD AND MEMBERS FOX AND HURTGEN

On March 27, 1997, Administrative Law Judge Mary Miller Cracraft issued the attached decision. The Respondent filed exceptions and a supporting brief and the Charging Party-Petitioner filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt her recommended Order.[1]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Nabors Alaska Drilling, Inc., Anchorage, Alaska, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[Direction of Second Election omitted from publication.]

CHAIRMAN GOULD, dissenting in part.

I agree with my colleagues that the Respondent has engaged in unfair labor practices and objectionable election conduct, as described both in this case and in *Nabors Alaska Drilling, Inc.*, 325 NLRB No. 105 (April 8, 1998), Cases 19–CA–24334, et al. (*Nabors II*). I write separately because I find that the traditional remedies imposed here, even coupled with the direction of a second election, are inadequate to restore to the Respondent's employees the truly free choice, which Section 7 of the Act guarantees them, to decide whether or not they want the Union to be their collective-bargaining representative. In accord with the Supreme Court's remedial analysis in *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969), I would order the Respondent to recognize and to bargain with the Union for a reasonable period of time, and I would overrule Board precedent holding that the Board lacks authority to impose a remedial bargaining order in the absence of a showing that a union has at one time achieved majority support among the employees it seeks to represent.[1]

The Respondent's employees work at remote oil drilling sites in Alaska. Their work schedule involves 2 weeks on and 2 weeks off. During the nonwork periods, they disperse widely. Despite the considerable obstacles to communications imposed by these circumstances, the Union had already secured authorization cards from approximately 49 percent of these employees when it petitioned for a Board election on September 1, 1995. Thereafter, the Respondent commenced a vigorous antiunion campaign among its captive employee audience at the remote drilling camps. At the same time, it denied the Union's request for access to those camps to deliver its organizational message. Consequently, the Union was severely hindered in its attempts to counter the Respondent's campaign. I agree with my colleagues and the judge that this denial of access was unlawful under the narrow inaccessibility exception to the general rule precluding nonemployee organizational access to private property. See *NLRB v. Babcock & Wilcox, Inc.*, 351 U.S. 105 (1956); and *Lechmere, Inc. v. NLRB*, 502 U.S. 527 (1992).

Furthermore, not all of the Respondent's election campaign statements were lawful. At one mandatory employee meeting, Supervisor Laverne Linder unlawfully threatened that employees would ''lose their asses'' if the Union came in. In another instance, Supervisor Rod Klepzig threatened employees that the Respondent could find out how they voted and that after the election union organizers would be run off.

Notwithstanding the fact that the Union stood within a hairsbreadth of a showing of majority support when it filed an election petition, it lost the mail ballot election held 2 months later by a considerable margin. And the Respondent's unfair labor practices did not cease with the electoral defeat of the Union. Within 3 months, it discharged three employees whom it knew or suspected were union activists. As found by the judge and affirmed by the Board in *Nabors II*, these discharges violated Section 8(a)(3) and (1) of the Act. They also gave meaning to Supervisor Klepzig's preelection threat.

My colleagues have imposed traditional remedies for the Respondent's misconduct: the posting of notices to

[1] Contrary to our colleague, we do not regard this as an appropriate case for considering the overruling of Board precedent on the issue of nonmajority bargaining orders. Member Fox notes that the 8(a)(1) threats on which the Chairman relies were made by low-level supervisors (''toolpushers''), and the only violation with demonstrable widespread exposure in this unit of nearly 300 voters was the denial of access violation, for which the proposed remedy is well calculated to make possible a fair second election. Member Hurtgen is of the view that *Gourmet Foods*, 270 NLRB 578 (1984), was correctly decided and would not reconsider it.

[1] While Member Fox states that the remedy is inappropriate because ''low level'' supervisors were the parties who were engaged in the threats, it is the *combined* effect of the discharges, denial of access *and* the threats, discussed infra, which make the remedy appropriate.

employees, reinstatement and backpay for the unlawfully discharged employees, nullification of the first election, and the direction of a second election. These remedies alone will not restore the status quo as of September 1, 1995. More is required.

In my view, the situation here demands our revival of a potent remedy that the Board wrongly discarded 14 years ago in *Gourmet Foods*, 270 NLRB 578 (1984). A majority there held that the Board lacked the authority to issue a remedial bargaining order, even in the most egregious cases of employer misconduct during an organizational campaign, if the organizing union had never achieved a showing of majority support. I would overrule *Gourmet Foods*.

From the Act's inception, bargaining orders have played a prominent role in the Board's remedial scheme. As early as 1937 employer unfair labor practices have been combated with bargaining orders,[2] but their use had always been restricted to situations where majority support for a union had been shown to exist at some relevant time. In fact, the Board had expressed serious doubt that the Act even permitted it to issue a so-called nonmajority bargaining order, even where there was a ''strong possibility'' that, but for the employer's unfair labor practices, a union majority would have been attained.[3]

Others expressed a different view. Most notably, in 1965, Professor Bok advocated the limited use of nonmajority bargaining orders as a step in the development of more effective Board remedies for employer unfair labor practices. He wrote about the situation where

> [b]y indulging in unfair labor practices, the employer has made it impossible to ascertain what the decision of the majority would have been in a free election. But there is a strong possibility that the union would have prevailed, in view of the support which it had already gained among the employees. Although the Board could order an election after ruling on the unfair labor practices, such an election might not provide an accurate indication of what would have occurred but for the employer's violation, both because changes in personnel may have seriously altered the composition of the unit and because of the lingering effects of the serious unfair practices. Under these circumstances, it would be consistent with accepted remedial principles to prevent the employer from capitalizing on the uncertainty created by his own unlawful acts and to resolve even substantial doubts against by conferring representative status on the union. See, e.g., *Bigelow v. RKO Radio Pictures, Inc.*, 327 U.S. 251, 265 (1946).[4]

This concept of a nonmajority remedial bargaining resurfaced in *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969). In that seminal case, the Supreme Court referred to a class of unfair labor practices so ''outrageous'' and ''pervasive'' that a fair and reliable election would be impossible. It suggested the possibility that in ''category 1'' violations of this kind the Board might consider a bargaining order ''without need of inquiring into a majority status on the basis of cards or otherwise.'' Id. at 613–614. Still, the Board did not act on the remedial initiative suggested by this dictum until several years later, after the Third Circuit expressly held that the language in *Gissel* signaled the Supreme Court's view that, notwithstanding the strong majoritarian principles inherent in the Act's guarantee of employee free choice on matters of collective-bargaining representation, the Board had the statutory authority to issue a remedial bargaining order in exceptional cases without a prior showing of majority union support.[5]

On remand of this case from the Third Circuit, the Board finally issued its first ever nonmajority bargaining order in *United Dairy Farmers Cooperative Assn.*, 257 NLRB 772 (1981). The Board followed up with another such order the next year in *Conair Corp.*, 261 NLRB 1189 (1982), enf. denied in pertinent part 721 F.2d 1355 (D.C. Cir. 1983). The D.C. Circuit, over a vigorous dissent from Judge Wald, denied enforcement of that order and became the only Federal court of appeals to hold that the Board lacked the authority to issue a remedial bargaining order, regardless of the severity of an employer's unfair labor practices, in the absence of a quondam majority showing. The Board accepted the D.C. Circuit's view in *Gourmet Foods, Inc.*, 270 NLRB 578 (1984), and that has been the law, with little further comment, until now.[6]

[2] *Bradford Dyeing Assn.*, 4 NLRB 604, 617–618 (1937), affd. 310 U.S. 318 (1940).

[3] *H. W. Elson Bottling Co.*, 155 NLRB 714, 715–716 (1965).

[4] Bok, *The Regulation of Campaign Tactics in Representative Elections Under the National Labor Relations Act*, 78 Harv. L. Rev. 38, 138–139 fn. 274 (1964).

[5] *United Dairy Farmers Cooperative Assn. v. NLRB*, 633 F.2d 1054 (3d. Cir. 1980). The court cited the opinions of the Fourth, Fifth, and Tenth Circuit in support of its analysis. Id. at 1066 fn. 13.

[6] In *Linden Lumber Division v. NLRB*, 419 U.S. 301 (1974), the Supreme Court affirmed the Board's holding that if an employer has not committed any unfair labor practices it may reject evidence of a card majority and insist that a union petition for an election. Obviously, that issue is not presented here and, therefore, I do not pass on it. However, I note that the Court's affirmance of the Board was predicated on deference to our expertise, which leaves us free to reverse the decision in *Linden Lumber*. In this regard, see my concurring opinion in *Monson Trucking*, 324 NLRB No. 149 (Oct. 31, 1997), explaining the basis for our capacity to reverse the Supreme Court's decision in *Pattern Makers League v. NLRB*, 473 U.S. 95 (1985).

The focus of the Court's rationale in *Gissel* is one of remedy, i.e., to eliminate the incentive and actuality of profit from wrongdoing under the statute. The Court of Appeals for the Third Circuit, speaking through Judge Higginbotham, properly noted that, ''[a]bsent legal intervention many employers have the capability, by threat or exercise of economic power, to coerce the employees' choice of a representative.'' *United Dairy Farmers*, supra at 1066. In some circumstances, as the court noted, traditional remedies such as cease-and-desist orders, reinstatement and rerun elections break down when employees have been effectively deterred by serious or egregious unfair labor practice conduct. Under some circumstances the ''reparative actions'' of the Board will not suffice. Id. at 1067.

Though the matter was not precisely posed to the Court in *Gissel*, the opinion appears not to question the Fourth Circuit's view that in certain cases bargaining orders are appropriate ''without need of inquiry into majority status on basis of cards or otherwise.'' *NLRB v. Gissel Packing Co.*, 395 U.S. at 613–614. Except for Justice (then Judge) Ginsburg's view in the majority opinion in *Conair v. NLRB*, 721 F.2d 1355 (D.C. Cir. 1983), all of the courts confronted with the issue, like the Third Circuit, appear to have assumed that bargaining orders in the absence of a card majority are appropriate under some circumstances.[7] And as Judge Wald noted in her dissent in *Conair*:

> [T]he principle of majority rule was always discussed in the context of an employer's bargaining obligations or the employees' representation choices; it was never discussed as a limitation on the Board's powers. Indeed, the Act's major sponsor, Senator Wagner, explicitly approved the possibility of a remedial bargaining order in the absence of a current majority when he approved the result in *Texas & New Orleans Railroad Co. v. Brotherhood of Railway & Steamship Clerks*, 281 U.S. 548, 50 S.Ct. 427, 74 L.Ed. 1034 (1930). . . . In addressing that case, Senator Wagner implicitly acknowledged that strict application of the principle of majority rule must sometimes give way to the need to remedy illegal employer practices in order to permit employees genuine freedom of choice. Id. at 1395.

As Judge Wald noted, the legislative history with regard to nonmajority bargaining orders is silent. Thus, the express statutory policy is central to resolution of this issue.

The principal argument against such orders is that they contravenes the Act's majority rule policy set forth in Section 9(a), i.e., that ''[r]epresentatives designated or selected . . . by the majority of the employees in a unit . . . shall be the exclusive representative of all the employees in such unit for the purposes of collective bargaining.'' I cannot accept this contention.

As Judge Wald herself notes such a position exalts the right to refrain over the right to engage in concerted activity under the Act. This idea, as Judge Wald noted, proceeds upon the ''unjustified premise that the employees' right to reject collective bargaining is more important than their right to choose it . . .'' *Conair*, at 1397. This assumption is inconsistent with the preamble of the Act which does not even speak of the right to refrain but sets forth the Act's statutory core as one which is predicated upon both freedom of association and the public policy in favor of the practice and procedure of collective bargaining.

Where, as here, it is reasonable to conclude that but for the Respondent's lawlessness the Union would have attained a card majority, I do not find that the principle of majority rule is undermined by issuance of a nonmajority bargaining order. In fact, just the opposite is true. As Judge Higginbotham observed in *United Dairy Farmers*, 633 F.2d at 1068:

> [t]he failure to recognize the authority of the Board to issue bargaining orders in these circumstances would undermine the underlying goal of the Act to further the majority preference of all employees. Unions which would have attained a majority in a free and uncoerced election if the employer had not committed unfair labor practices would be deprived of recognition merely because of the employer's illegal conduct.

Furthermore, to deny a bargaining order in the face of what I find here were ''outrageous'' and ''pervasive'' violations envisioned by the *Gissel* category 1 paradigm, would permit the coercive effects of the Respondent's misconduct to go virtually unremedied and thereby defeat for the foreseeable future the Section 7 right of employees to make a free choice in selecting a bargaining representative. The facts of this case demonstrate the validity of these two points.

The Union began its organizing drive in May and, by the time it filed its representation petition on September 1, it had the support of 49 percent of the unit employees. The Respondent then began its own campaign against unionization, a campaign that included unlawful threats of job loss, surveillance, and retaliation against union advocates, and that culminated in the postelection discharge of union supporters. The lasting impression of these violations was greatly magnified, in my view, by the Respondent's unlawful denial of access for the Union to communicate with em-

[7] See *NLRB v. Armcor Industries*, 535 F.2d 239, 244 (3d Cir. 1976); *J. P. Stevens Co. v. NLRB*, 441 F.2d 514, 519 (5th Cir. 1971), cert. denied 404 U.S. 830 (1971); *NLRB v. Montgomery Ward & Co.*, 554 F.2d 996, 1002 (10th Cir. 1977); *NLRB v. S. S. Logan Packing Co.*, 386 F.2d 562 (4th Cir. 1967).

ployees. By assuring a communications monopoly at its remote oil rig base camps, the Respondent gave concrete example to the Orwellian maxim that ''he who controls the present, controls the past, and he who controls the past controls the future.'' Under the circumstances, there seems little prospect that any of the Respondent's employees who experienced this one-sided election campaign and its aftermath would truly be able to make a free and informed judgment about union representation for a long, long time to come.

The importance of access rights cannot be gainsaid in situations like this where employees are beyond the reasonable reach of the Union to communicate its organizational message. Thus, in establishing the broad presumption in *Lechmere*[8] that nonemployee union organizers do not have access to an employer's private property, the Supreme Court thought it important to except from this presumption those situations where, as here, employees are generally inaccessible to union organizers away from the workplace. And during my tenure at the Board, when authorized by the Act or Supreme Court precedent,[9] I have repeatedly opposed conduct by employers that has deprived employees from learning the advantages of self-organization from union representatives.[10] No statutory right contained in our national labor policy is more fundamentally significant than that of the right to hear the union's message at the workplace. Therefore, when the effect of access deprivation has prevented the Union here from crossing the magical 50-percent threshold of employee support, it seems perverse to withhold a remedy that otherwise would have obtained if the Respondent's misconduct had taken place after a card majority had been secured.

I have often stated my views that in many areas the Board lacks effective remedies to combat unlawful behavior by employers and unions and therefore cannot fully serve the Act's purposes.[11] In some instances, only Congress can redress this situation. In the present case, however, I see no good reason to refrain from using a remedial tool that the Supreme Court and several courts of appeals have suggested or held is within the Board's authority to use under circumstances such as these. As the preceding analysis demonstrates, the Respondent's unfair labor practices are of a nature that precludes any rational expectation that a fair election among the employees can possibly take place in the foreseeable future. We should utilize our remedial authority to its fullest extent here and in future exceptional cases of outrageous and pervasive misconduct when it is reasonable to infer that an uncoerced employee majority would otherwise have chosen union representation. Not to do so would only reward this Respondent for its serious and extensive flouting of the Act, encourage others to engage in similar violations, and thus ultimately to undermine and frustrate the policies and purposes of the Act.

[8] *Lechmere, Inc. v. NLRB*, 502 U.S. 527 (1992).

[9] Supreme Court precedent in *Lechmere* did not permit such an approach in *Loehmann's Plaza*, 316 NLRB 109, 114 (1995) (W. Gould, concurring); *Leslie Homes, Inc.*, 316 NLRB 123, 131 (1995) (W. Gould, concurring).

[10] See, e.g., my opinions in *Mod Interiors*, 324 NLRB No. 33 (Aug. 7, 1997); and *Fountainview Care Center*, 323 NLRB No. 172, slip op. at 2–3 (June 16, 1997) (W. Gould, concurring) advocating strict adherence to the rule in *Excelsior Underwear*, 156 NLRB 1236 (1966), that seeks to ensure that all employees are ''exposed to the arguments for, as well as against, union representation.'' Id. at 1241. See also my concurring opinion in *Technology Service Solutions*, 324 NLRB No. 49 (Aug. 22, 1997).

[11] W. Gould, *Agenda for Reform: The Future of Employment Relationships and the Law* (MIT Press 1993).

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William F. Mede, Esq. and *Patrick J. McCabe, Esq. (Owens & Turner)*, of Anchorage, Alaska, for the Respondent.
Kevin Dougherty, Esq., of Anchorage, Alaska, for the Charging Party.

DECISION AND REPORT ON ELECTION OBJECTIONS

STATEMENT OF THE CASE

MARY MILLER CRACRAFT, Administrative Law Judge. These cases were heard in Anchorage, Alaska, on August 13–16, and October 1–4, 1996, and are based on a consolidated complaint alleging that Alaska State District Council of Laborers, AFL–CIO (the Union) was denied access to remote camps to contact off-duty employees of Nabors Alaska Drilling, Inc. (Nabors or the Respondent) for organizational meetings in violation of Section 8(a)(1) of the Act.[1] Consolidated with the unfair labor practice cases are the Union's objections to conduct affecting the outcome of a representation election conducted November 20, 1995.[2]

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the parties, I make the following

FINDINGS OF FACT

I. JURISDICTION AND LABOR ORGANIZATION STATUS

The Respondent is a State of Alaska corporation with its main office and place of business in Anchorage, Alaska, where it is engaged in the business of oil drilling services throughout the State of Alaska. During the 12 months preceding issuance of the consolidated complaint, the Respondent had gross sales of goods and services valued in excess of $500,000, and sold and shipped goods or provided services from its facilities within the State of Alaska to customers outside the State or sold and shipped goods or pro-

[1] The charge in Case 19–CA–24152 was filed by the Union on October 4, 1995. Three other cases, Cases 19–CA–24334, 19–CA–24373, and 19–CA–24400, involving the postelection discharge of three individuals, were also consolidated with this case for hearing. A separate decision (JD(SF)21-97) treats those cases. Counsel for the General Counsel's unopposed motion to correct the transcript is granted.

[2] All dates are in 1995 unless otherwise referenced.

vided services to customers within the State, which customers were themselves engaged in interstate commerce by other than indirect means of a total value in excess of $50,000. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *Access*

1. Background

Nabors drills for oil on arctic drilling rigs on the North Slope of Alaska and in the Cook Inlet and Kenai Peninsula areas in southern Alaska.[3] Its North Slope operations consist of four rigs in Prudhoe Bay and three rigs in the Milne Point area. In addition, Nabors operates two rigs in southern Alaska: a rig on Granite Point Oil Platform in Cook Inlet and another rig in the Swanson River area. The Union attempted to organize employees who worked on these nine rigs in the spring and summer of 1995. Although the Union attained authorization cards from 49 percent of the employees, it ultimately lost the November 20 representation election conducted by the NLRB. Timely election objections followed including one objection which overlaps the access issue alleged in the complaint. There is no dispute that Nabors denied the Union's request for access to the remote camps during the preelection period.

2. The sites

The North Slope: Prudhoe Bay and Milne Point—Seventy-seven percent of the eligible voters worked on the seven rigs located on the North Slope. Nabors operations were in two areas on the North Slope: Prudhoe Bay (rigs 2ES, 18E, 28E, and 3S) and Milne Point (rigs 4ES, 27E, and 22E). Nabors' North Slope employees regularly worked on these rigs for 2 weeks without break (with 12-hour, 7-day per week schedules) and then had 2 weeks off. Approximately 119 Nabors employees eligible to vote in the election worked on the 4 Prudhoe Bay rigs and approximately 112 Nabors employees eligible to vote in the election worked on the 3 Milne Point rigs for a total of approximately 231 eligible voters working on the 7 North Slope rigs.

Nabors' North Slope employees and supervisors[4] flew to the North Slope on Fridays from the Anchorage International Airport using a Shared Services charter or Alaska Airlines commercial flights. Many employees arrived at the Anchorage Airport at least 1 hour in advance of departure.[5] The northbound Prudhoe Bay employees flew into the Deadhorse Airport, a facility with regularly scheduled daily jet service by commercial air carriers such as Alaska Airlines. Prudhoe Bay Hotel, a commercial hotel facility, is in close proximity to the Deadhorse Airport. Typically, the northbound Milne Point employees flew into Kuparuk Airport, located about 45 to 50 miles from the Deadhorse service area. Kuparuk Airport is not a public facility.

Crew ''change outs'' occurred on Fridays, with northbound Milne Point crews departing Anchorage on the morning charter and southbound crews returning in the afternoon. Prudhoe Bay crews departed Anchorage in the afternoon and southbound crews returned in the late afternoon. There were approximately 30 to 35 Nabors' employees on each of the 2 outbound flights that left the Anchorage Airport on Fridays. Similarly, anywhere from approximately 60 to 70 Nabors employees returned to the North Slope each Friday on Shared Services charter.

Prudhoe Bay employees were housed in Deadhorse at the Peak base camp (also referred to as the Kodiak base camp), owned by Kodiak Oilfield Haulers, Inc., (KOH), a wholly owned subsidiary of Nabors. KOH charges Nabors on a per-man-day basis for each crew member housed at this camp. KOH has delegated day-to-day management of the camp to a third-party caterer, Universal Ogden Services (UOS). About 115 of the employees eligible to vote in the election were housed at the Peak camp, only half of whom were on the Slope on any given day.[6] The camp is not in a secured area. There are three or four telephone booths available for use by employees on each floor at the Peak base camp but there are no personal phones in the living quarters. A mail bag is sent up daily from Nabors in Anchorage to the Peak base camp. Personal mail for the crew is included routinely in the bags.

Employees working on Milne Point rigs 4ES and 22E were housed at BP-owned Milne Point base camp. The parties stipulated that Nabors had no control over access at Milne Point base camp. Jerry Smith, human resources manager for BP, testified that BP maintains security at Milne Point but there is no policy against union access. About 65 of the employees eligible to vote in the election were housed at this camp, only half of whom were on the Slope on any given day. The crew of rig 27E lived at a wheel mounted mobile camp which stayed with the rig.

The Milne Point camp had eight telephones available, four on two floors. All phones were in public areas and were in great demand. There was no official message procedure but sometimes if employees were not available to receive a call, someone would leave a note on the door of their room. Nabors' employees shared these facilities with employees of other employers. Two or three televisions were provided at Milne Point and the vast majority of employees had their own TVs as well. Most employees watched CNN, movies, or ESPN. The Anchorage Daily News was available for $1 while copies lasted. Radio reception was extremely poor in-

[3] Nabors performs under contract with Shared Services Drilling, an enterprise formed by the owners of Prudhoe Bay such as ARCO Alaska, Inc. (ARCO), BP Exploration (Alaska), Inc. (BP), and Unocal.

[4] Management on the rigs included ''drillers'' who reported to ''tool pushers,'' both admitted supervisory classifications. The tool pushers and drillers reported to the drilling superintendent, in charge of all the rigs. In addition, a ''company man'' on each rig represented the oil company contracting with Nabors for drilling services. Drillers traveled to and from the slopes with their crews. Tool pushers ''changed out'' on Wednesdays.

[5] Boarding passes were given out 1-1/2 hours before departure so if employees wanted good seats, they arrived earlier than 1 hour in advance.

[6] The parties stipulated that 119 eligible voters worked on the Prudhoe Bay rigs and, additionally, stipulated that 115 of these 119 were housed at the Peak base camp.

side the camps and could be obtained only from the Barrow, Alaska station. No vehicles were available for employee use nor was public transportation available. Mail was received via the Nabors' mail pouch. There were two bulletin boards at Milne Point.

Access to the rig 27E camp, owned by Nabors, and located on the Milne Point pad, is controlled by BP. Doyon Universal Services caters the camp. About 45 of the employees eligible to vote in the election were housed at this camp, only half of whom were on the Slope on any given day. Camp 27E had two telephones on the same line. One of the phones was close to employees' rooms while the other was by the drillers' office. No radio reception is available through the metal walls. One television was provided downstairs with satellite reception. There was no Alaska station reception at this camp. The main TV room controlled broadcast access for all employees on their own private televisions. The camp usually received one copy of the Anchorage Daily News. It remained intact for only a short time. Mail was received through the Nabors' mail pouch. There was no private or public transportation available. There were two bulletin boards for employee use and one official bulletin board for company notices.

Granite Point Oil Platform—The rig 156 camp is located on the Granite Point Oil Platform in Cook Inlet off shore from Kenai, Alaska. Access to the platform is restricted by Unocal, the owner, to essential personnel. Access is via helicopter or work boat. About 29 unit employees (or 10 percent) worked on this rig, only half of whom were present on any given day. Prior to departure for the platform, the Nabors crews gathered in the OSK (off shore Kenai) heliport facility in Nikiski, Alaska. There are camp units for Nabors' employees on the platform. The camp units are owned by Nabors. The platform and camp are private property with access restricted by Unocal to essential personnel. There is no history of providing housing to the general public at this camp.

Bufflehead Rig, Swanson River—Approximately 22 Nabors employees eligible to vote in the election worked on rig 154 in the Swanson River area. The Nabors crews working on this rig represented approximately 7 percent of the employees eligible to vote in the election. There was no camp involved with this rig. These employees worked a 12-hour day, lived at home, and commuted to the jobsite. The property on which this rig is located was owned or leased by ARCO. Employees drove to a parking lot where a company supervisor waited and they were then transported to the rig by a company vehicle.

3. The campaign

Prepetition Activity—The Union's efforts to organize employees centered on the Anchorage Airport. Business Representative and Organizer Tim Sharp conducted the bulk of the campaign. He attempted to target departing employees in the gate area. However, it was extremely difficult to know which individuals worked for Nabors. Each Friday in May, June, July, August, and September, the Union rented the Susitna Room on concourse C. Employees arrived and departed from concourse B. However, employees generally were not available on their return from the North Slope because they had already been awake for 20 hours and still, in many cases, faced a drive to their homes of some distance.

Prior to filing the representation petition in this case, the Union circulated an undated flyer to Nabors' employees which generally described the election process and which stated that the Union would not file for an election, ''unless we have a minimum showing of interest of 60 to 70% from you and your co-workers.'' The Union filed its representation petition on September 1, 1995. At the time of filing, the Union had obtained 143 signed authorization cards or approximately 49 percent of unit employees.

Petition and Request for Access—The petition was filed on September 1. After the parties reached agreement on a stipulated mail-ballot election on September 19, approved by the NLRB Regional Director on September 25, the Union requested access to Nabors' remote camps for organizational meetings by letter dated September 21, from Union Attorney Kevin Dougherty to John Zenor, counsel for Nabors.[7] In a letter dated September 25, Zenor acknowledged receipt of the Union's September 21 letter and advised that Nabors was researching the legal basis for the access request and stated that, for the time being, the Union's request for access was denied.

By letter dated October 2, Zenor wrote to Dougherty setting forth Nabors' ''formal reply'' denying union nonemployee organizers access to Nabors' campsites for employee meetings. On October 4, the Union filed unfair labor practice charge, Case 19–CA–24152, regarding Nabors' denial of the Union's request for campsite access by nonemployee organizers. Despite the pendency of the unfair labor practice charge, the Union decided to proceed to an election.

Postpetition Campaign and Election Results—The Union relied on prounion employees to distribute literature on the North Slope. It also sent mailings to employees' homes and continued distributing literature at the Anchorage Airport. Some of these mailings urged employees to call the Union and set out the Union's phone number. However, Sharp testified that it took about a week for the Union to respond to Nabors' statements because the Union had to wait for crew change outs up to a week later to find out about Nabors' campaign. The Union was unable to secure the Susitna Room at the Anchorage Airport on a monthly basis after September.

On one occasion, Jeff Couture, an openly prounion employee, received permission from Danny Abear, tool pusher on Rig 4ES, to talk with his hands. Jeff Couture told Bryan Buzby, his tool pusher on 27E, about this at noon and Buzby said it would be fine. However, when Jeff Couture attempted to use the Nabors truck to get to the rig, Buzby told him he could not use it. There was no other way to reach the rig so Couture abandoned his effort.

Laverne Linder, tool pusher at 22E, recalled a conversation with Jeff Couture and Brian Buzby in late September in which Jeff Couture asked if he could show prounion videos. Linder said he would have to find out. Linder later told Buzby that it would be permissible for Jeff Couture to show the video to consenting nonworking employees at rig 27E.

[7] A letter of September 25 from Sharp to Jim Denney, president of the Respondent, requested access to meet with employees during their off-duty time at ''Trading Bay, Swanson River, Granite Point, Milne Point, PEAK Camp, Any other Nabors satellite camps.'' Denney did not receive this letter.

Linder did not know if Buzby relayed this information to Jeff Couture.

The Union received the *Excelsior* list on October 2. The *Excelsior* list, as originally submitted, indicated that 82 employees had Anchorage addresses (17 of these were not street addresses but, rather, post office boxes or rural route boxes); 152 employees were listed with Alaska addresses outside of Anchorage (and of these, 124 were not street addresses); and 57 employees lived outside the State of Alaska (with 16 of these addresses not being street addresses). After revisions were made to the *Excelsior* list for inaccurate or wrong addresses, Nabors concluded that 95 employees had addresses in the greater Anchorage metropolitan area (from Girdwood in the south to Chugiak in the north); 73 employees had addresses in the Matanuska-Susitna (Mat-Su) Valley area including Wasilla, Palmer, east to Sutton and north to Willow; 58 employees had addresses in the greater Kenai/Soldotna area including Anchor Point (including 20 to the 22 employees who worked on rig 154 and commuted daily to work); 7 employees had addresses in out-State Alaska; and 58 had addresses in States other than Alaska.

Utilizing the *Excelsior* list as well as phone numbers it obtained from some authorization cards, the Union was able to find 175 phone numbers. Telephone calls and house calls were made in an attempt to reach off-duty employees. Jeff Couture participated in the house call effort. Only about 1 address in 40 yielded an actual employee. The hunting and fishing seasons were in full swing. Many addresses were post office boxes or mail drops. Some of the addresses were wrong or the person no longer lived there. He also participated in telephoning. He called about 150 employees and succeeded in reaching about 15 of them. Tim Sharp estimated 1 successful contact resulted in 30 house calls. He said the Union was never able to deduce which employees were on the Slope and which were on leave at any given time.

Duane Allen, international representative for the Union, came from Idaho to assist in the postpetition campaign effort. He visited the van pool site for the Swanson River rig but employees appeared to go directly from their cars to the company van where a supervisor waited. He also attempted to reach the helipad area but it was posted ''No Trespassing.'' Eventually, he reached one employee and through this employee, was able to meet with three or four more employees. Allen also made house calls in the Kenai area and averaged 1 successful call out of 34 attempts. He made phone calls as well but reached an employee on an average of 1 time out of 20 attempts.

The Union did not hold any meetings at the union hall although it has a large hall about 10 miles from the Anchorage Airport. The Union considered a 30-second TV spot on a local Anchorage station. It understood that the spot might be rebroadcast on RATNET, a state subsidized satellite rebroadcast available in rural areas including the Slope. The price was $150 to $160 for 30 seconds. Additionally, the Union was quoted $2500 to $5000 for a quarter page advertisement in The Fairbanks Daily News Miner. None of these options were utilized because the Union did not believe they would be effective.

Nabors conducted a vigorous campaign. Two tool pushers, Laverne Linder and Charles Henley, were assigned to make presentations regarding Nabors' position on unionization to employees at the North Slope sites. Approximately 40 paid meetings were held at the remote camps over a 2-month period. Four different antiunion videos were shown to employees at these meetings and various literature and question and answer sessions supplemented the videos.

By the end of the campaign, Sharp estimated that he had been able to reach 50 to 70 employees personally. Jeff Couture estimated that he handed out about 75 authorization cards while on the Slope.

Ballots were mailed to employees on October 23 and the returned ballots were counted on November 20. Of the 209 ballots returned, 2 were challenged, 7 were void, 53 votes were cast for the Union, and 147 cast against representation by the Union.

4. Legal framework

The consolidated complaint alleges that the Respondent violated Section 8(a)(1) on October 2, by denying the Union's requests for access to Respondent's remote camps to allow the Union to conduct organizational meetings to contact off-duty employees in nonworking areas. A timely election objection also claims election interference on the same basis.

Section 7 of the National Labor Relations Act provides in relevant part that, ''employees shall have the right to self-organization, to form, join, or assist labor organizations.'' An employer who interferes with, restrains, or coerces employees in the exercise of their Section 7 rights, violates Section 8(a)(1) of the Act. The right of self-organization depends in some measure on ability of employees to learn the advantages of self-organization from others. *Novotel New York*, 321 NLRB 624, 630 (1996) (citing *Central Hardware Co. v. NLRB*, 407 U.S. 539, 543 (1972)). As the Court stated in *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200 fn. 2 (1994),

> The right of employers to exclude union organizers from their private property emanates from state common law, and while this right is not superseded by the NLRA, nothing in the NLRA expressly protects it. To the contrary, this Court consistently has maintained that the NLRA may entitle union employees to obtain access to an employer's property under limited circumstances. [Citations omitted.]

The ''limited circumstances'' alluded to in *Thunder Basin* have been described in several Supreme Court cases. In *NLRB v. Babcock & Wilcox Co.*, 351 U.S. 105 (1956), the Court held that although generally no restriction may be placed on employees' rights to self-organization, there is ''no such obligation . . . owed nonemployee organizers.'' 351 U.S. at 113. In a later discussion of the holding in *Babcock*, the Court stated in *Lechmere, Inc. v. NLRB*, 502 U.S. 527 (1992),

> As a rule, an employer cannot be compelled to allow distribution of union literature by nonemployee organizers on his property. As with many other rules, however, we recognized an exception. Where ''the location of a plant and the living quarters of the employees place the employees beyond the reach of reasonable union efforts to communicate with them,'' ibid., employers' property rights may be ''required to yield to the extent needed

> to permit communication of information on the right to organize,'' id. at 112.

The Court further noted,

> § 7 simply does not protect nonemployee union organizers *except* in the rare case where ''the inaccessibility of employees makes ineffective the reasonable attempts by nonemployees to communicate with them through the usual channels.'' 351 U.S. at 112. Our reference to ''reasonable'' attempts was nothing more than a commonsense recognition that unions need not engage in extraordinary feats to communicate with inaccessible employees—*not* an endorsement of the view [which we expressly rejected] that the Act protects ''reasonable'' trespasses. Where reasonable alternative means of access exist, § 7's guarantees do not authorize trespasses by nonemployee organizers, even [as we noted in *Babcock*, id. at 112] ''under . . . reasonable regulations'' established by the Board.

Moreover, the burden of proving that rare case where inaccessibility makes ineffective the reasonable attempts to communicate through usual channels is a heavy one. See, e.g., *Leslie Homes*, 316 NLRB 123, 126 and fn. 8 (1995). The Board therein noted the Court's admonition that the *Babcock* inaccessibility exception was extremely narrow and designed to safeguard the rights of employees who, ''are isolated from the ordinary flow of information that characterizes our society.'' Specific examples set forth by the Court in *Lechmere* were those locations where the plant and living quarters of the employees placed them beyond the reach of reasonable efforts to communicate with them such as employees in mining camps, logging camps, or mountain resort hotels. *Babcock*, 351 U.S. at 539–540.

5. Contentions

The Respondent initially notes that employees were not inaccessible due to work or living conditions because for 2 weeks of every 4, employees were at home and, accordingly, not beyond the reach of union efforts to communicate with them. Thus, the Respondent argues that cases allowing access to remote, isolated locations are factually distinguishable because in those cases the employees remained in the remote locations and were inaccessible throughout the critical period. The Respondent also argues that the Union's success in obtaining authorization cards from about one-half of the employees conclusively demonstrates that the Union effectively communicated without the need for trespassory access by nonemployee organizers. The Respondent additionally notes that the timing of the request for access—3 months after commencement of the campaign and 3 weeks after filing the petition—belies the need for access and, in fact, argues that there were no unique obstacles to communication due to the availability of airport meetings and leafleting, on-the-job literature distribution, in one instance an employee was allowed to show a prounion video in a common area, availability of mail, and availability of home addresses and telephone numbers pursuant to the *Excelsior* list.

Counsel for the General Counsel argues that this is one of those rare instances for which the exception set forth in *Babcock* and *Lechmere* applies; i.e., employees isolated from the ordinary flow of information that characterizes our society. He relies primarily on *Husky Oil NPR Operations*, 245 NLRB 353 (1979), enfd. 669 F.2d 643 (10th Cir. 1982). The Respondent argues that *Husky Oil* is both factually distinguishable and of little precedential value.

6. Analysis

This case does not involve discriminatory enforcement of an access rule[8] nor is there an issue of insufficient property interest to entitle exclusion from private property.[9] Rather, the issue to be determined is whether the narrow exception allowing nonemployee access in remote sites, ''where the plant and living quarters of the employees place them beyond the reach of reasonable efforts to communicate with them'' is applicable. As counsel for the General Counsel has argued, *Husky* is factually quite similar to the facts here. However, before examining *Husky* in depth, it is necessary to determine its precedential value in light of intervening decisions.

Husky was decided after the Supreme Court issued *Hudgens v. NLRB*, 424 U.S. 507 (1976) (rejecting application of constitutional free speech principles to disputes regarding nonemployee access to ''quasi-public'' private property). Moreover, there is no suggestion in the rationale of *Husky* that in granting access, the Board considered any constitutional rights to free speech. *Husky* was decided before the Board enunciated the balancing test set forth in *Fairmont Hotel Co.*, 282 NLRB 139 (1986),[10] as modified by *Jean Country*, 291 NLRB 11 (1988).[11] Further, in determining whether reasonable alternative access existed, *Husky*'s analysis is premised solely on *Babcock* and not on a multifactor balancing test.[12] Accordingly, I find that *Husky* retains precedential value even though it predates issuance of *Lechmere*.[13]

In *Husky*, the employer was engaged in exploration of the national petroleum reserve. Employees worked 7 days a week for 12 hours each shift at Camp Lonely located on the

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[8] See, e.g., *Be-Lo Stores*, 318 NLRB 1, 10–12 (1995); *Schear's Food Center*, 318 NLRB 261 fn. 2 (1995); *Dow Jones & Co.*, 318 NLRB 574, 575, 587 (1995); *Riesbeck Food Markets*, 315 NLRB 940 (1994), enf. denied No. 95-1766 (4th Cir. 1996); and *Great Scot, Inc.*, 309 NLRB 548, 549 (1992), enf. denied 39 F.3d 678 (6th Cir. 1994).

[9] See, e.g., *Johnson & Hardin Co. v. NLRB*, 49 F.3d 237 (6th Cir. 1995); *Nelcorp*, 316 NLRB 625 (1995); *Bristol Farms*, 311 NLRB 437 (1993); and *Payless Drug Stores*, 311 NLRB 678, 679 (1993). Although the Respondent argues that it did not control access to some of the remote camps, none of the parties argue that the Respondent's property interest in the remote camps was insufficient.

[10] The relative strength of Sec. 7 rights and property rights were weighed and accommodation was attained with ''as little destruction of one as is consistent with the other.'' 282 NLRB at 178. Only when the competing rights were relatively equal were alternative means of communication examined.

[11] Availability of reasonable alternative means must be considered in every access case. 291 NLRB at 14.

[12] In *Lechmere*, the Court explained that it is only after determining that reasonable access is not feasible, ''that it becomes necessary and proper to take the accommodation inquiry to a second level, balancing the employees' and employers' rights . . . .'' 502 U.S. at 538.

[13] As the Court stated in *Lechmere*, ''We reaffirm [*Babcock*'s general rule that 'an employer may validly post his property against nonemployee distribution of union literature'] today, and reject the Board's attempt to recast is as a multifactor balancing test.'' 502 U.S. at 538.

Arctic Ocean about 660 air miles from Anchorage, Alaska. The camp was accessible only by private or chartered aircraft and the landing strip was apparently under the control of the employer. The 45 employees worked various schedules including 2 weeks on and 2 weeks off, 4 weeks on and 2 weeks off, and 6 weeks on and 2 weeks off. The weather affected these schedules at times. Employees were housed two to a room in a camp maintained by the employer. One public telephone serviced the entire dormitory area. Mail reached employees via employer carrier. No commercial television was available although videotapes of Anchorage television programs were available. Commercial radio broadcast was received intermittently from Barrow, Alaska. When not at Camp Lonely, employees resided, for the most part, in the greater Anchorage metropolitan area.

The Board adopted the decision of the administrative law judge, who stated, ''All of the legal reasoning necessary to reach a decision in this case was set out by the United States Supreme Court in the *Babcock & Wilcox* decision.'' 245 NLRB at 355. The judge cited four cases supporting his finding that it was impossible for the union organizers to reach employees through usual means of communication. All four cases relied on the remoteness of employees in granting access. For instances, in *NLRB v. Lake Superior Lumber Corp*., 167 F.2d 147 (6th Cir. 1948) (cited in *Babcock*, 351 U.S. at 109, 111), the court upheld the Board's conclusion that prohibiting the union from soliciting employees in the bunkhouses violated Section 8(a)(1). In *S & H Hinrichsen Grossinger's Inc*., 156 NLRB 233, 256 (1965), enfd. in relevant part 372 F.2d 26 (2d Cir. 1967), the Board adopted the judge's decision based on *Babcock* that resident employees of a mountain resort hotel were beyond the reach of reasonable union efforts to communicate with them. The union therein requested access during the election campaign in order to reach the resident employees.

In *Alaska Barite Co*., 197 NLRB 1023, 1028 (1972), enfd. 83 LRRM 2992 (9th Cir. 1973), cert. denied 414 U.S. 1025 (1973), the court upheld the Board's finding that the employer violated Section 8(a)(1) by denying access to its remote island mining site shortly before the consent election. Finally, in *Sabine Towing & Transportation Co*., 205 NLRB 423 (1973), enf. denied in part and granted in part 599 F.2d 663 (5th Cir. 1979), the Board reversed the judge and found that the union was entitled to access to the employer's deep sea oil tankers during the preelection period. The finding was premised on *Babcock*.

The Respondent argues that these cases are factually distinguishable because Nabors employees were only in remote premises for 2 weeks out of every 4 and their schedules were regular and predictable during this period while the employees in Husky had irregular schedules and weather was often a factor making their transportation schedules erratic. It is true that the cases are factually distinguishable in this manner. However, I do not find this distinction warrants a different result. Nabors' employees reported to seven rigs on the North Slope. There were four crews for each rig, each crew reporting at 1-week intervals. Under these circumstances, it was extremely difficult for the Union to discern specific employee's schedules.

I find that the North Slope and Granite Point employees (93 percent of the petitioned-for unit) were beyond the reach of reasonable efforts to communicate with them because of the remote location of the rigs and camps. These employees were isolated from the ordinary flow of information which characterizes our society. I rely in particular on the remoteness of the camp locations, lack of transportation in and out of these locations, lack of radio and local commercial television reception, the paucity of newspapers, lack of privacy in use of telephones, and company controlled mail service. These conditions, of course, existed every 2-week period of work. During their 2 weeks off, employees were dispersed. However, because the election agreement was reached on September 19 and ballots were mailed on October 23, only a 1-month period existed for effective campaigning.

Finally, I find that the Union's success in attaining 143 signed authorization cards, principally through meetings at the Anchorage Airport Susitna Room, does not indicate that the airport provided a reasonable alternative means of access. Of necessity, management utilized the airport for its meetings.[14] Moreover, statutory supervisors accompanied the employees on chartered flights to and from the slopes and were present at the airport for this purpose. Finally, I note that the airport changed its policy regarding advance booking during the campaign and beginning in October, the Union could no longer book a regular room more than 1 week in advance. There are only two meeting rooms at the airport. One of them, the Ilyamna Room, is quite remote. The Susitna Room is the only viable meeting room. Due to the rotation of crews, a 4-week timeframe at the airport is required to reach all employees who are leaving for the North Slope. The Union needed a reliable monthly booking in order for the airport to afford a reasonable alternative.

The Respondent argues that the Union failed to use other means of communication to reach employees. Specifically, the Respondent notes that the Kuparuk and Deadhorse Airports and the Prudhoe Bay Hotel have rooms sufficiently large for union purposes. Although such rooms undoubtedly exist, I do not find that they afford meaningful communication opportunities which might be considered a reasonable alternative means of access. The evidence clearly indicates that employees have no means of transportation to these areas while they are stationed on the North Slope. When employees arrive at these sites from Anchorage, they are immediately transported to their camps. When employees are transported to these airports for return to Anchorage, it is at the end of a 2-week tour of duty. Many have worked for 12 hours before coming to the airport and simply want to sleep. The driller, a statutory supervisor, accompanies each crew and would be able to view which employees were meeting with the Union in these locations, assuming that the Union could obtain rooms in these locations.[15]

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[14] In a later section, I deal specifically with allegations of surveillance. My finding regarding access is independent of any alleged surveillance.

[15] The parties disagree as to whether these rooms were available to the Union. Jay Loesch, asset manager for Nabors, described an Alaska Airlines meeting room at the Deadhorse Airport, the airport through which all Prudhoe Bay employees pass. Loesch asserted that this room was available for anyone to rent. Crews arrive at the airport about 1 hour prior to departure. Loesch also described another meeting room for rent at the North Slope Borough offices, about 2 miles from Peak base camp. In addition, Loesch described a meeting room in the Kuparuk Airport operated by ARCO and another room at the Kuparuk Industrial Center owned by the North Slope Borough

The Respondent also argues that a media campaign utilizing newspapers, radio, and television was a reasonable alternative method for the Union to communicate. I reject this argument. Not only would a media campaign have involved extraordinary expense, it would also be ineffective due to the wide area in which employees lived and the fact that they were on an oil rig 2 of every 4 weeks at which time there was no live local TV broadcast or radio reception and limited newspapers.

Finally, the Respondent argues that employees on the Granite Point Platform were accessible to the Union. About 10 percent of the eligible voters worked at this site. Only half of them were present at any given time. I find that the Union exercised great effort in attempting to reach these employees but was unable to do so because of no trespassing postings and the use of management van arrangements to transport employees to the helipad.

Having found that these employees are beyond the reach of reasonable efforts to communicate with them, it is appropriate to balance the employees' and employers' rights in order to accommodate one with as little destruction of the other as possible. I note that the Union seeks access to the camps, that is, the living quarters of employees, in order to speak face to face to employees while they are off duty. Respondent's property ownership interest varies from one facility to another. Access to these facilities, whether controlled by the Respondent or not, must be arranged in advance for security reasons. Balancing this property interest against the strong Section 7 right of employees to organize, I find that the property interest must yield and that the Union should be granted access to the camps for the purposes of meeting with off duty employees.

B. *Threats and Impression of Surveillance*

The consolidated complaint alleges that in the fall of 1995, the Respondent threatened employees by stating that employees would ''lose their asses if the Union came in,'' and by telling employees that it would ''run off'' supporters of the Union after the election. The consolidated complaint further alleges that the Respondent told employees it could find out how they voted during the NLRB election.

1. Timeliness of allegations

The charge in Case 19–CA–24152, filed on October 4, 1995, alleged denial of access in October 1995 in violation of Section 8(a)(1) but did not include allegations of threats and impression of surveillance. Nevertheless, the consolidated complaint, issued April 3, 1996, alleged the threats and impression of surveillance.

The Respondent moved to dismiss these allegations because no underlying charge was filed within 6 months of the alleged violations. Section 10(b) of the Act provides, ''no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge.''

The General Counsel is not barred from alleging matters not expressly set forth in a charge if these matters, ''are related to those alleged in the charge and which grow out of them while the proceeding is pending before the Board.'' *NLRB v. Fant Milling Co*., 360 U.S. 301, 307 (1959). In *Redd-I, Inc*., 290 NLRB 1115 (1988), the Board reaffirmed its adherence to the closely related test for determination of whether matters alleged in the complaint are time barred, stating:

> In applying the traditional ''closely related'' test in this case, we will look at the following factors. First, we shall look at whether the otherwise untimely allegations are of the same class as the violations alleged in the pending timely charge. This means that the allegations must all involve the same legal theory and usually the same section of the Act (e.g., 8(a)(3) reprisals against union activity). Second, we shall look at whether the otherwise untimely allegations arise from the same factual situation or sequence of events as the allegations in the pending timely charge. This means that the allegations must involve similar conduct, usually during the same time period with a similar object (e.g., termination's during the same few months directed at stopping the same union organizing campaign). Finally, we may look at whether a respondent would raise the same or smaller defenses to both allegations, and thus whether a reasonable respondent would have preserved similar evidence and prepared a similar case in defending against the otherwise untimely allegations as it would in defending against the allegations in the timely pending charge.

290 NLRB at 1118. This holding was later applied to 8(a)(1) allegations in *Nickles Bakery of Indiana*, 296 NLRB 927 (1989).

The Respondent argues that the allegations do not meet the requirements of the closely related test because different legal theories are involved, there is only one factual similarity—that the camp access issue and the allegations of threats and surveillance occurred during the same representation campaign—and this similarity is an insufficient justification for finding the untimely allegations closely related, and different defenses are involved. The General Counsel relies on *Well-Bred Loaf*, 303 NLRB 1016 fn. 1 (1991), in which the Board stated that there is a sufficient nexus if the allegations in dispute and the allegations in the timely filed charge occurred within the same general time period and concern conduct which constitutes an overall plan to resist a union. In *Well-Bred Loaf*, the timely filed charges alleged 8(a)(3) discrimination during a 4-month period. The allegations at issue involved 8(a)(1) surveillance and discharge in violation of Section 8(a)(3). The Board found these allegations closely re-

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and available for rent with transportation to and from the airport available as well. A faxed statement from the operator of this room indicated it was available to the public at large from June through December 1995. Jeff Ackerman, business representative for Operating Engineers Local 302, called these facilities in an attempt to rent them for the union. He was told that Kuparuk Industrial Center was not available for rent to the public. He received a message from ARCO that its room in the Kuparuk Airport was in constant use and it did not rent it out. Finally, Ackerman was told that the North Slope Borough does not make its meeting rooms available to the public. It is unnecessary to determine whether the rooms are available for the Union's use as they do not present a viable alternative means of communication. Were it necessary to determine availability of these facilities, I find that both Loesch and Ackerman truthfully testified regarding what they were told and the Union would not have been able to rent these facilities.

lated to the timely filed charge, relying on *NLRB v. Braswell Motor Freight Lines*, 486 F.2d 743, 746 (7th Cir. 1973) (allegations involving ''part of an overall plan to resist organization'' are closely related).

Based on *Well-Bred Loaf* and similar cases,[16] I find a sufficient nexus between the allegations of threat and creation of the impression of surveillance and the allegations based on the charge in Case 19–CA–24152 alleging denial of access to warrant expansion of the complaint to include these allegations. I note that all of these allegations involve Section 8(a)(1) of the Act, all of these allegations occurred in the fall of 1995, and all involve the organizational campaign during that fall.[17]

2. Facts

During October and November, captive audience meetings were held by Laverne Linder and Charlie Henley, tool pushers, after the employees' shifts were completed. All meetings were mandatory. Employees were paid for the time spent at the meetings. At each meeting, an antiunion film was shown first and then discussion followed about the subjects in the film. According to Kevin Adams, roustabout, at one meeting Linder said if employees went union they would lose their ass; the insurance would not be as good and employees would end up paying dues so it would be money out of their pockets. O'Neal Coyne, a roughneck, also recalled such a meeting at which Linder said the employees would lose their asses if the Union came in and employees paid dues to them and got nothing in return. Mike Pearson, fork lift driver, testified,

> I don't recall everything that was said because a lot of it was so mundane and so ludicrous in my opinion, a lot of it I blocked out but I do remember Laverne would come up with things like you're going to lose your ass. You know Nabors is here to make money not give it away. He'd bring up things like ARCO wouldn't go for, you know go for a unionized oil working rig.

Linder testified that he told employees that they could end up with less if they unionized but he did not recall telling employees they would lose their ass. Linder explained, ''Well, at many times I wanted them to understand that they could possibly lose in this situation, or be put at a disadvantage. Now, losing your ass might possibly mean that.''

Steven Couture, sewer plant operator on rig 27E, recalled a meeting toward the end of October with Rod Klepzig, tool pusher on that rig, in the break room during morning break. Two roustabouts were also present. According to Steven Couture, Klepzig stated that when employees were hired, they agreed that they could be fired at any time and that Nabors could find out if they wanted to how we voted. Couture also testified that Klepzig stated that after the election, organizers would be run off. Although Klepzig recalled 5 or 10 discussions with Steven Couture about the Union, Klepzig denied making any statements like these.

3. Legal framework

Section 8(a)(1) of the Act prohibits an employer from interfering with, restraining, or coercing employees in the exercise of their right to form, join, or assist labor organizations. It is an unfair labor practice for an employer to threaten employees by statements indicating that unionization would be a futile or detrimental act.[18] In determining whether particular statements constitute threats or are permissible opinions or predictions reasonably based in fact,[19] the statement must be considered in the totality of relevant circumstances. *Action Mining*, 318 NLRB 652, 654 (1995) (relevant context may supply meaning to otherwise ''ambiguous or misleading expression if considered in isolation'').

Further, an employer may not threaten that union organizers will be discharged[20] nor may an employer indicate that it can find out how employees voted in a Board-conducted election.[21] Employer motive in making such statements or proof of whether the coercion succeeded or failed are not relevant to the analysis. Rather, coercion exists if the conduct reasonably tends to interfere with the free exercise of employee rights.

4. Analysis

Threat that Employees will lose Their Asses—I credit the testimony of Adams, Coyne, and Pearson that Linder told employees they would lose their asses if the Union came in. The testimony of these three witnesses was straightforward and clear. Linder did not recall using the phrase but agreed that his message might be construed to mean that employees could (not would) lose their asses if the Union came in. The Respondent argues that the context of the statement indicates that it was no more than either a statement that Nabors' customers might not find it as competitive or reliable depending on the terms of any negotiated or contract or a statement regarding the possibility that any negotiated contract might have less favorable economic conditions that currently enjoyed, when taking into account employees' dues obligations. Certainly, such statements were also made. However, I do not find that the addition of such statement alters the effect of the credited statement. Whether Linder said employees would lose their asses because a less favorable contract would be negotiated or because Nabors might lose its customers, such a statement reasonably tends to interfere with free exercise of employee rights.

Impression of Surveillance and Threat of Discharge—I credit the testimony of Steven Couture that Rod Klepzig told him the Employer could find out how employees voted and

[16] See, e.g., *Fiber Products*, 314 NLRB 1169 (1994), enf. sub nom. *FPC Holdings, Inc. v. NLRB*, 64 F.3d 936, 941 (4th Cir. 1995).

[17] On May 7, 1996, the charge in Case 19–CA–24334 alleging an 8(a)(3) discharge was amended to include the allegations at issue. It is unnecessary to determine whether there is sufficient nexus to this charge.

[18] See, e.g., *Hertz Corp*., 316 NLRB 672, 686 (1995) (employees could lose all their benefits if the union came in); and *Forrest City Grocery Co*., 306 NLRB 723, 729 (1992) (employees would probably get nowhere in bargaining).

[19] See *NLRB v. Gissel Packing Co*., 295 U.S. 575, 617 (1969).

[20] See, e.g., *Jordan Marsh Stores Corp*., 317 NLRB 460, 463 (1994) (statement that union letter setting forth names of union activists, ''would give [employee] no protection,'' violative); and *Ouboard Marine Corp*., 307 NLRB 1333, 1335 (1992).

[21] See, e.g., *Capitol EMI Music*, 311 NLRB 997, 1006 (statement that company will know how employees voted in election constitutes unlawful impression of surveillance); and *Aquatech, Inc*., 297 NLRB 711, 713 (1990), enfd. 926 F.2d 538 (6th Cir. 1991) (statement that employer could learn which employees had signed authorization cards created impression of surveillance).

that after the election union organizers would be run off. As already indicated, Steven Couture was a straightforward witness and displayed a clear recollection of the conversation. Throughout his testimony, Steven Couture quickly admitted when there were conversations which he simply could not recall, but this was not one of them. Although Klepzig flatly denied making these statements, he admitted that he had been on vacation during supervisory training regarding permissible campaign statements and he admitted that he and Steven Couture frequently discussed the Union. Furthermore, Jeff Couture testified that his brother Steven repeated Klepzig's threat to Jeff, who was an open union supporter. Jeff Couture confronted Klepzig regarding the statement and attempted to give Klepzig a xerox from a labor law book which set forth employee rights. Klepzig agreed that Jeff Couture confronted him with literature setting forth employees' rights under the Act.

The Respondent argues that even if Steven Couture's testimony is credited, only 3 employees in a 291-employee unit would have heard Klepzig's statements and, accordingly, the allegations should be dismissed as de minimis. In *Musicians Local 76 (Jimmy Wakely Show)*, 202 NLRB 620 (1973), the Board adopted the narrow de minimis doctrine applicable to conduct which may be in technical contravention of the statute but is nevertheless so insignificant and so largely rendered meaningless by subsequent conduct that it would not be utilized as a basis for either a finding of violation or a remedial order. The exception was meant to apply to violations having little or no impact on employee exercise of statutory rights. Id. at 621–622. The narrow de minimis exception does not apply in this situation. See, e.g., *Sunnyside Home Care Project*, 308 NLRB 346, 348 (1992) (threat to discharge union supporter not de minimis). Although the Respondent's subsequently distributed literature which set forth employees' right to a private, confidential ballot,[22] Klepzig's statements regarding the ballot and the threat to run off union supporters are not so insignificant and so largely rendered meaningless by subsequent conduct to be considered de minimis.

C. *The Representation Case*

1. Background

On September 1, the Union filed a petition in Case 19–RC–13080 seeking certification as the representative of all employees of the Respondent's Alaska operations in Cook Inlet and the North Slope. Pursuant to a stipulation for certification upon consent election, approved September 25, a mail-ballot election was conducted in the following appropriate unit:

> All employees working as derrickmen, motormen, floorhands, forklift operators, roustabouts, solids control, crane operators, or safety equipment managers working for the company in the State of Alaska, but excluding all managers, professional, engineers, supervisors as defined in the Act (including without limitation, drillers, toolpushers, casing crews, catering managers), satellite camp cooks, HSE employees, clerical employees, guards and all other employees not included in the Unit.[23]

The November 20 tally of ballots indicates that of the approximately 291 eligible voters, 53 votes were cast for the Union and 147 were cast against the Union. On November 22, the Union filed timely objections to conduct affecting the election and on January 12, 1996, the Regional Director for Region 19 issued his report on objections and direction of hearing directing that a hearing be held on the objections and that the objections be consolidated with Case 19–CA–24152 for the purpose of hearing.

2. Analytical framework

Critical period[24] conduct which creates an atmosphere rendering improbable a free choice warrants invalidating an election. *General Shoe Corp.*, 77 NLRB 124 (1948). Such conduct need not rise to the level of an unfair labor practice. It is sufficient that the conduct create, ''an atmosphere calculated to prevent a free and untrammeled choice by the employees.'' 77 NLRB at 127. As the Board explained, ''In election proceedings, it is the Board's function to provide a laboratory in which an experiment may be conducted, under conditions as nearly ideal as possible, to determine the uninhibited desires of the employees.'' Id.

3. Facts and analysis

Eight specific objections are set for hearing, each of which will be discussed seriatim.

> *Objection 1*—Nabors has denied access by the petitioner to the Remote-site work camps in Prudhoe Bay and on drilling platforms in Cook Inlet, for the purpose of obstructing the Alaska Laborers ability to discuss the Union. This objection is fully contained in the unfair labor practice (ULP) pending before the Board in Case 19–CA–24152 and is incorporated here.

As recognized in this objection, the matter has been fully incorporated in the unfair labor practice allegations. The 8(a)(1) conduct, a fortiori, interferes with the free exercise of choice and is objectionable unless, ''it is virtually impossible to conclude that the misconduct could have affected the election result,'' based on the number of violations, their severity, the extent of dissemination, the size of the unit, and other relevant factors. *Gonzales Packing Co.*, 304 NLRB 805 (1991) (quoting *Clark Equipment Co.*, 278 NLRB 498, 5050 (1986)); see also *Barton Nelson, Inc.*, 318 NLRB 712 (1995). Consistent with my conclusion regarding the unfair labor practice allegation, I find that Nabors' denial of access interfered with the conduct of a free and fair election because it potentially affected all of the employees.

[22] The Respondent does not contend that its conduct rose to the level of a repudiation as set forth in *Passavant Memorial Hospital*, 237 NLRB 138 (1978). However, it notes that this was only because it was not informed of any such allegation until after the election.

[23] HSE employees are health, safety, and environmental employees.

[24] The critical period is the time between the filing of the petition and the date of the election. *Ideal Electric Mfg. Co.*, 134 NLRB 1275 (1961). In this case, that period is September 1 to November 20.

> *Objection 2*—Prior to the election, supervisors of the Employer questioned and interrogated employees to determine how they would vote and simultaneously indicated that the Company did not want the employees to vote for the Union. The Employer further coerced employees by stating that Nabors would find out how you voted and may use that against you.

Brett Heim testified that just prior to the election, Charlie Martin, the driller, asked him on two occasions how he would vote. One time this occurred in a private conversation and the other time it occurred on the floor of the rig and, according to Heim, Martin asked each of the crew how they would vote. Martin testified, ''I don't ever remember asking—no, sir.'' I credit Heim's testimony. The Respondent relies on *Rossmore House*, 269 NLRB 1176 (1984), enfd. sub nom. *Hotel & Restaurant Employees Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985), arguing that even if Heim's testimony is credited, the interrogation, which is not illegal per se, is insufficient to justify a new election. I do not find *Rossmore House* applicable because there is no evidence from which to infer that Heim was avowed union supporter. Moreover, the questioning of an entire crew is not so insignificant as to come within the *Gonzales* exception.

Consistent with my unfair labor practice findings regarding the impression of surveillance and the threat of discharge, I find that Rod Klepzig told Steven Couture that the Employer could find out how employees voted and that after the election, the union organizers would be run off. The Respondent argues that these statements are not a sufficient basis to overturn the election because they were made a single to a group of 3 employees in a 291-employee unit. Moreover, the Respondent argues that it clearly, unequivocally, and repeatedly informed employees that their votes would be by secret ballot. I agree. Pursuant to the standard set forth in *Gonzales*, I find that it is virtually impossible to conclude that this misconduct could have adversely affected the election results. At most, 3 employees in the 291-employee unit heard these remarks. The Union ultimately lost this election by approximately 100 votes. Moreover, as the Respondent notes, there was ample literature setting forth the requirement that ballots were secret and confidential.

> *Objection 3*—Nabors' agents unlawfully threatened employees to vote against the Union or the Oil companies would refuse to hire Nabors and its employees. This is not only unlawful but it is inaccurate. (See attached letter of ARCO dated November 20, 1995, yet, too late to correct the Employer's coercive statements.)

According to roustabout Kevin Adams and mechanic Valentino Emberty, during one of the captive audience meetings, Linder said that Nabors would price themselves right out of a job and the rigs would be stacked if the employees unionized. Adams recalled that during this same meeting, Linder spoke about Nabors' competitive position in the marketplace. Adams, Brett Heim, a floor hand, and forklift driver Mike Pearson, who were present at the same meeting, recalled Linder said ARCO and BP had their feelings and Nabors might or might not be able to keep the rig running.

Frank Anderson, pit watcher, testified that Charlie Martin stated during a safety meeting at which the crew was present, ''that we'd probably lose all the work that we'd accumulated if we voted in the union. We'd all be out—out of work.'' Jeff Couture, an outspoken union advocate, was asked to speak to Charlie Martin's crew about why he thought the employees should be unionized. Jeff Couture spoke to the crew and referenced a pay raise, holiday pay, and other benefits. Martin responded, ''a raise is going to cause the day rates to go up. And then we'll lose work.'' Martin testified that he did not believe Nabors would be as competitive if the Union came in but he could not recall telling employees that if they voted for the Union they would be voting themselves out of a job. However, he did recall telling employees that the Union would make Nabors less competitive. I credit Anderson and Couture and find that Martin's remarks extended to relating to employees that Nabors would lose work if unionized.

The Respondent argues that even if these employees are credited, it is clear that any references to loss of customers because of loss of a competitive edge was bolstered by objective, historical fact, noting that when Nabors was unionized before, 10 new rigs were bid and awarded on the slope and Nabors was successful in obtaining only one rig. Accordingly, relying on *Gissel*, the Respondent argues that such statements were reasonable predictions based on available facts and thus protected by Section 8(c) of the Act.[25]

Based on the above statements, it is clear that employees were not told that it was possible the rigs would be stacked or that customers might consider awarding contracts to other, nonunion contractors. Nor was there any reference to objective, historical fact. Employees were told that if they voted for the Union, they would lose work. I find that these statements crossed the line from objective, historical fact or possibility to statements that a union victory threatened or probably threatened employees with loss of work. See, e.g., *Reeves Bros*., 320 NLRB 1082, 1083 (1996); and *SPX Corp*., 320 NLRB 219, 221 (1995). Accordingly, I find that these statements interfered with a free and fair election and recommend that the election be set aside.

> *Objection 4*—Nabors threatened employees by indicating it would fail to properly negotiate in good faith with the Alaska Laborers if the employees chose union representation.
>
> No evidence was presented regarding this objection.
>
> *Objection 5*—The Employer has used unlawful surveillance to observe employee communication with the Union, including Nabors' personnel director Belinda Wilson's surveillance of Laborers' Tim Sharp leafleting and discussions with Nabors' employees, and the ''accidental'' attendance of Bill Mede at the Laborers meeting at the Anchorage Airport.

Employees testified that they observed Personnel Manager Belinda Wilson and tool pusher Laverne Larkin at the Anchorage Airport on a Friday in October standing at the door of the cafeteria while Sharp was handbilling in front of the

[25] Sec. 8(c) provides:

> The expression of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit.

cafeteria. Wilson recalled being at the airport on four occasions during the election campaign. She did not recall viewing any leafleting. Her purpose in being at the airport was to meet with drillers to orient them regarding the union campaign. In addition, contrary to his usual schedule of flying to the Slope on Wednesdays, Larkin flew with employees on Fridays several times during the election campaign. Larkin was aware that it was unlawful to spy on union activity. He was routinely in and out of the airport for travel to the Slopes on Tuesday and Wednesday. He met with tool pushers on those days to educate them about the ''Do's and Don'ts'' of the union campaign.

In order to meet with the drillers, Larkin testified he also visited the airport on a Friday in September. Drillers had been in the bargaining unit the last time that Nabors was unionized but this time they were excluded. The meeting was to be in the Ilyamna Room around 6 a.m. Larkin and Wilson met in the Ilyamna Room and when the drillers did not arrive, discussed whether the drillers knew where the Ilyamna Room was and decided they might not know. Larkin found the drillers in the smoking area of the cafeteria. Larkin also went out on at least one occasion for about 5 minutes to find drillers who were standing in line who did not know about the meeting. Larkin did not go to the C concourse or try to spy on the union activities. Thereafter, the meetings with other drillers were in the cafeteria.

William F. Mede, attorney for Nabors, was also expected to attend the drillers meeting in the Ilyamna Room. Mede testified that he was directed to a room on the C concourse by a uniformed security officer. As it turned out, Mede had been directed to the Susitna Room which the Union had rented for organizational purposes. According to Mede, he entered the Susitna Room, introduced himself to Tim Sharp and Jeff Couture, the only two people in the room, Sharp asked him to leave and he left. According to Tim Sharp and Jeff Couture, Mede did not immediately leave but, rather, remarked, ''I see why we can't rent the Susitna Room,'' or something to that effect. Then Mede introduced himself to Jeff Couture and asked for Couture's name. Only on being asked by Sharp to leave a second time, did Mede comply. Couture and Sharp told other employees about this experience in order to demonstrate how desperate they believed Nabors was.

Jim Denney, president of Nabors, recalled being at the airport for meetings with the drillers on several occasions to go over the union organizing campaign rules. This was probably in September. At no time on any of these trips did Denney stand outside the cafeteria except for more than a ''couple'' minutes in order to catch the driller that was anticipated. Denney was given literature once by Sharp as Denney boarded the Shared Services charter plane for Milne Point. Sharp came back later and introduced himself. Denney could not place a specific date on this encounter.

Management's use of the airport, a public facility, to conduct its own business was an ordinary event. Belinda Wilson flew to the North Slope with crews before and after the election. Nabors documented its use of the airport both before and after the election campaign and I find these documents persuasive that Nabors was simply following its ordinary course of business in reaching the crews or management personnel when they were gathered to fly to the Slope. The union leafletting was in plain view on public property. There is no evidence of photography, note taking, or disruption. Accordingly, I find that management's presence at the airport did not rise to the level of objectionable conduct. See, e.g., *Days Inn Management*, 306 NLRB 92 (1992). Moreover, I find that Mede was misled to the Susitna Room and only on entering did he realize the mistake. Whether he was asked to leave once or twice is immaterial as, by all accounts, he was there only briefly. Accordingly, I do not find that Mede's actions interfered with employee free choice but, rather, were an unintentional mistake. See, e.g., *Montfort of Colorado*, 298 NLRB 73, 146–147 (1991), enfd. in relevant part 965 F.2d 1538 (10th Cir. 1992) (employer attorney who looked into an openly advertised union meeting did not engage in objectionable surveillance).

> *Objection 6*—Nabors interfered with the Laborers weekly-scheduled meetings with employees at the Anchorage Airport's Susitna Room by purposefully seeking to override the Laborers reservation of the room by booking the Susitna Room for the Company. Nabors conduct upset the Laborers announced weekly meetings with employees at the Airport.

Sharp testified that he reserved the Susitna Room on a monthly basis in June, July, August, and September. However, when he attempted to reserve that room for October, airport personnel told him that he could no longer reserve the room for an entire month. At a later time, Sharp observed the reservation book which indicated that Nabors had reserved the Susitna Room for the entire month of October, preempting him and in contravention of the policy which had been explained to him. According to Sharp, he complained to the director of the airport and thereafter, Nabors' reservation for October was canceled and the room was placed on a first come basis, meaning anyone could reserve the room on Monday for the following Friday. Sharp did not thereafter attempt to rent the room on this basis. He felt that he needed to have the same room each Friday in order for the crews to know where to go.

Belinda Wilson testified that she did not reserve the Susitna Room but on one occasion, she contacted her friend Susan Hinshaw, who worked in the airport office, to ask about availability of a room at the airport for four consecutive Fridays in November or December. Wilson explained that she was interested in availability of the room in order to schedule employee meetings for insurance selection purposes. According to Wilson, Hinshaw told her that Wilson would have to contact the woman in charge of reservations if she wanted to reserve a room. Wilson was aware that the Union had been using the Susitna Room on Fridays at the time she made the phone call. About a week after she made this call, Wilson learned of the new policy at the airport which prohibited reserving a room on a monthly basis. Eventually, the employees were mailed brochures for insurance selection. In 1993, meetings were held in the airport for this purpose because the insurance options had changed.

Mark Lindsey, vice president of Nabors, testified that he went to the airport during this hearing and asked to copy the reservation book in question. While observing the book, he noticed that ''Nabors'' had been written on the calendar for Friday, October 6, and Friday, October 13, and then erased. Another erasure for Friday, October 20, was for an entity

other than Nabors. He did not observe an erasure for Friday, October 27.

There is no dispute that Nabors has utilized both the Susitna and the Ilyamna Rooms from time to time for meetings. I find no interference with employee free choice due to Wilson's phone call or in reservation of the Susitna Room, if it was reserved by the Respondent.

> *Objection 7*—Nabors unlawfully threatened to get rid of the employees who wrote letters or voiced support for a union.
>
> This objection was discussed in connection with Objection 2.
>
> *Objection 8*—The *Excelsior* List submitted by the Employer had numerous irregularities which adversely affected the employees' ability to receive information from the union or to receive a mail ballot, and further listed Engineers who were to be excluded from the unit.

Excelsior Underwear, 156 NLRB 1236 (1966), and *North Macon Health Care Facility*, 315 NLRB 359 (1994), require that an employer provide a list containing the full names and addresses of all eligible voters. The parties' stipulation regarding the *Excelsior* list is as follows: Nabors transmitted a 13-page *Excelsior* list to the Anchorage field office of the NLRB on October 2, 1995, via mail and facsimile. The Board field office received the *Excelsior* list on October 2, 1995. A copy of the *Excelsior* list was made available by the Board Office to the Union on October 2, 1995.

The stipulation continues stating, the *Excelsior* list set forth the names and addresses for 291 employees eligible to vote in the election. Of the addresses for the 291 eligible voters recorded on the list, 16 addresses were inaccurate and 4 were no longer current, for a total of 20 addresses which were inaccurate or no longer current. The inaccurate addresses were for Charles Tiulana, Craig Asuchak, Ruben Castruita, Philip Doyle, James Furry, Sean Holcomb, Randy Johnson, Ricky Kirby, Jeff Long, Richard McCleary, Robert Millard, James Russell, Mike Schiller, Ellis Snow, Ed Tinsley, and Michael Tybrowski.

Nabors' vice president of finance, Mark Lindsey, was involved in preparation of the *Excelsior* list. He testified that the list was prepared using the most current addresses furnished by employees to Nabors. He learned within 2 to 3 weeks after providing the list to the NLRB that there were inaccuracies on the list. Specifically, there were incomplete street addresses listed for 15 employees. Lindsey explained that when the list was generated, a wide enough column had not been set up to print the entire address of some of the employees. Street addresses for 15 employees were truncated due to setting the column width too narrow for those addresses. A separate transmittal to the NLRB was then sent without truncation. Wilson was also involved in preparation of the list and testified she utilized her best efforts to prepare an accurate list and to correct inaccuracies as she became aware of them.

I find substantial compliance with the *Excelsior* list requirement. The full names of employees were provided. When inaccuracies or truncations were learned of, the Respondent remedied them. Moreover, inaccuracies in addresses has consistently been viewed as less serious than total omission of names. As explained in *Women in Crisis Counseling*, 312 NLRB 589 (1993),

> [T]he Board's greater tolerance of address inaccuracies in *Excelsior* lists reflects a pragmatic recognition that an employer reasonably should know the names of employees in its current work force but may be less able, without prompt disclosure from the employees themselves, to maintain a completely accurate list of their current addresses.

The facts do not indicate that the Respondent was either grossly negligent or acted in bad faith in providing the inaccurate addresses. Accordingly, I find no objectionable conduct with regard to the *Excelsior* list.

CONCLUSIONS OF LAW

1. By denying the nonemployee union organizers access to remote camps during the preelection period, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

2. By telling employees that they would ''lose their asses if the Union came in,'' by telling employees that the Respondent would ''run off'' union supporters after the election, and by telling employees that it could find out how employees would vote during the NLRB-conducted election, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

3. By denying the nonemployee union organizers access to remote camps during the preelection period, by telling employees they would ''lose their asses if the Union came in,'' by questioning employees about how they would vote in the NLRB-conducted election, and by telling employees that if they voted the Union in the oil rigs would be stacked, the Respondent prevented its employees from freely expressing their choice in the November 1995 election. Accordingly, I recommend that this election be set aside and a new election be conducted at a time and date to be determined by the Regional Director.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Having found that reasonable access to employees on the North Slope and Granite Point facilities is not feasible, and after balancing employees' and employers' rights, I recommend granting access to the Laborers' nonemployee union organizers to the Respondent's North Slope and Granite Point facilities, on request, subject to reasonable regulations.

In addition, having found that the Respondent engaged in objectionable conduct affecting the results of the election in Case 19–RC–13080, I shall recommend that the election held in that case on November 20, 1995, be set aside, that a new election be held at a time to be established in the discretion of the Regional Director, and that the Regional Director in-

clude in the notice of election the following *Lufkin Rule*[26] language:

NOTICE TO ALL VOTERS

> The election of November 20, 1995, was set aside because the National Labor Relations Board found that certain conduct of the Employer interfered with the employees' free exercise of a free and reasoned choice. Therefore a new election will be held in accordance with the terms of this Notice of Election. All eligible voters should understand that the National Labor Relations Act gives them the right to cast their ballots as they see fit, and protects them in the exercise of this right, free from interference by any of the parties.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[27]

ORDER

The Respondent, Nabors Alaska Drilling, Inc., Anchorage, Alaska, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Denying the nonemployee union organizers access to remote camps during the preelection period.

(b) Telling employees that employees would ''lose their asses if the Union came in,'' telling employees that it could find out how employees would vote during the NLRB-conducted election, and telling employees that it would ''run off'' supporters of the Union after the election was over.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) If requested by Alaska State District Council of Laborers, AFL–CIO, grant nonemployee union representatives access to its remote camps for organization meetings to contact off-duty employees in nonworking areas, subject to reasonable regulations concerned with time, frequency of visits, and safety considerations.

(b) Within 14 days after service by the Region, post at its places of operation in the State of Alaska, copies of the attached notice marked ''Appendix.''[28] Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 1, 1995.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the election conducted in Case 19–RC–13080 on November 20, 1995, be set aside, and that a new election be held at such time and under such circumstances as the Regional Director shall deem appropriate.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
> To form, join, or assist any union
> To bargain collectively through representatives of their own choice
> To act together for other mutual aid or protection
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT deny nonemployee representatives for Alaska State District Council of Laborers, AFL–CIO access to remote camps during any preelection period.

WE WILL NOT tell employees that employees would ''lose their asses if the Union came in.''

WE WILL NOT tell employees that we can find out how employees would vote during the NLRB-conducted election, and WE WILL NOT tell employees that we would ''run off'' supporters of the Union after the election was over.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, if requested by Alaska State District Council of Laborers, AFL–CIO, grant nonemployee union representatives access to remote camps for organization meetings to contact off-duty employees in nonworking areas, subject to reasonable regulations concerned with time, frequency of visits, and safety considerations.

NABORS ALASKA DRILLING, INC.

[26] *Lufkin Rule Co.*, 147 NLRB 341 (1964).

[27] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[28] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''